In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1663

JOHN E. MANFREDONIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on two counts of perjury arising from his testimony at a prior trial for violation of federal wagering statutes. On November 18, 1968, he was fined $2,000 and sentenced to eighteen months' imprisonment on one count, and was fined $2,000 and placed on five years' probation on the other count. The conviction was affirmed (414 F. 2d 760), and

petitioner thereafter served his prison sentence. On November 25, 1970, he was released and commenced the period of probation.

The pertinent facts are undisputed and are set forth fully in the district court's comprehensive opinion (Pet. App. C, pp. 5a-9a). One of the conditions of petitioner's probation required that he file monthly reports with his probation officer. For several months he filed either incomplete reports or no report, claiming that the privilege against self-incrimination entitled him to decline to answer questions concerning whether he had received money from sources other than employment and whether he had any debts which were due.[1] Subsequently probation revocation proceedings were instituted. Following a hearing in the district court, Judge Frankel, on March 31, 1972, revoked petitioner's probation, rejecting the contentions that the privilege against self-incrimination entitled petitioner to withhold the information sought and that a mental condition rendered petitioner unable to comply with the report requirement (Pet. App. C, pp. 9a-15a). On April 7, 1972, petitioner was sentenced to a prison term of six months. The court of appeals affirmed *per curiam* on the basis of the district court's opinion (Pet. App. A).

Petitioner reasserts here the contentions made below and answered fully in the district court's opinion, on which we rely. The claim regarding petitioner's mental condition was properly rejected based on the find-

[1] The fines imposed had been only partially paid during this period.

ings that petitioner was "capable of effective choice" and that petitioner's conduct was "a knowing, volitional refusal to report" (Pet. App. C, p. 11a). It was also properly held that the condition of probation requiring the filing of monthly reports was "centrally and necessarily implied" in petitioner's probation status, and that as a consequence the privilege against self-incrimination, like other constitutional guarantees applicable to non-probationers, "must be held unavailable because it is fundamentally inconsistent with the acquisition and maintenance of the probationary status" (*id.* at p. 14a). The courts of appeals have consistently sustained conditions of probation such as the report requirement which are reasonably related to the probationary status and which, but for that status, would impinge on constitutional rights, on the ground that persons granted probation are still deemed subject to the custody and control of the law. See *Kaplan* v. *United States*, 234 F. 2d 345, 347 (C.A. 8); *United States* v. *Alarik*, 439 F. 2d 1349, 1351 (C.A. 8), and cases there cited; *Porth* v. *Templar*, 453 F. 2d 330, 333-334 (C.A. 10).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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